

AGENDA



Recommendation for Council Action

Austin City Council	Item ID	24412	Agenda Number	10.
---------------------	----------------	-------	----------------------	-----

Meeting Date:	6/6/2013	Department:	Aviation
----------------------	----------	--------------------	----------

Subject

Authorize negotiation and execution of an amendment to the lease and hangar facility development agreement with Ascend AUS, LLC to require the Department of Aviation to relocate a Federal Aviation Administration signal cable, refund tenant a total amount of \$173,804.00, and modify other lease terms consistent with the mediated settlement agreement dated July 17, 2012.

Amount and Source of Funding

Funding is available in the Fiscal Year 2012-2013 Operating Budget of the Aviation Department.

Fiscal Note

There is no unanticipated fiscal impact. A fiscal note is not required.

Purchasing Language:	
Prior Council Action:	August 21, 2008: Council approved execution of a lease and hangar facility development agreement with Ascend AUS, LLC.
For More Information:	Shane Harbinson, 512-530-6652
Boards and Commission Action:	May 14, 2013 – Approved by the Austin Airport Advisory Commission on a 6-0 vote with Commission Member James Kelsey absent.
MBE / WBE:	
Related Items:	

Additional Backup Information

On August 21, 2008, City Council approved the execution of a lease and hangar facility development agreement with Ascend AUS, LLC (Ascend) to design, construct, and operate a new general aviation facility at Austin-Bergstrom International Airport (ABIA) providing additional hangar facilities for private jet aircrafts. The lease allows Ascend to build not less than 200,000 square feet of hangar space and all necessary infrastructure to support the facility such as a new taxiway connecting to the east runway system. The term of the lease is 30 years from the date of beneficial occupancy of the hangar facilities. Ground rent for the leased premises was set at the airport's then ground rental rate at \$0.23/sq. ft. escalated annually by the consumer price index.

On or about November 24, 2008, Ascend discovered a cable duct bank traversing the leased premises containing Federal Aviation Administration (FAA) radar, communication, and navigational cables critical to the safe and efficient operation of ABIA. Since the discovery, Ascend and the Department of Aviation have spent a considerable amount of time with the FAA to determine whether Ascend could build above the duct bank or whether the duct bank could be relocated. Due to the complexity of the matter, the potential cost, and involvement of the FAA, Ascend and the Department of Aviation could not reach a resolution.

As a result, the parties went to mediation on July 17, 2012 and entered into a Mediated Settlement Agreement. Under such agreement, the parties allowed time for the Department of Aviation to determine the feasibility of relocating the FAA signal cable. If such relocation was determined to be feasible, then the parties agreed to revise the lease agreement to set out the timeline for the design and construction of the FAA signal cable relocation, refund the ground rent Ascend had paid to date, and abate ground rent until relocation of the FAA signal cable is completed.

In accordance with the ABIA FAA Ductbank Relocation Feasibility Study dated October 9, 2012, and amended on October 24, 2012, the Department of Aviation determined that it is feasible to relocate the FAA signal cable from the leased premises to other land at ABIA not part of the tenant's leasehold. Also, on April 3, 2013, the FAA agreed to provide review of the design package of the signal cable relocation to ensure conformance to FAA design standards.

Accordingly, the parties are now prepared to revise the lease agreement requiring the Department of Aviation to relocate the FAA signal cable by August 1, 2015, refund the ground rent Ascend has paid to date, and abate rent and other lease terms until relocation of the FAA signal cable is completed.